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EXAMINER

SHINGLES, KRISTIE D

ART UNIT

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BARRY OMSHEHE, JANIE WEST, and PAUL W. FORNEY

Appeal 2009-0883
Application 09/954,509
Technology Center 2400

Decided: July 14, 2009¹

Before LEE E. BARRETT, LANCE LEONARD BARRY,
and JEAN R. HOMERE, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-20. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

INVENTION

The invention at issue on appeal facilitates "a session-based concurrent user licensing agreement on a manufacturing/process control information portal such that a single logon during a session persists across multiple distinct resources to which access is provided to a registered user via the plant information portal site." (Spec. 4: 8-11.)

ILLUSTRATIVE CLAIM

1. A method for administering a session-based concurrent user licensing agreement on a manufacturing/process control information portal such that a single logon during a session persists across multiple distinct resources to which access is provided via a plant information portal server, the method comprising the steps:

receiving, by the plant information portal server, an access request for a resource for which a license is required;

invoking, based upon a code within a sequence of commands associated with the requested resource, a license manager associated with restricted resources associated with the plant information portal server, the license manager performing, for the purpose of granting, if needed, one of potentially multiple available session-based concurrent licenses, a set of further steps including:

first confirming that an identified source associated with the request needs a concurrent license;

second confirming that a concurrent license is available to assign to the identified source; and

adding the identified source to a list of session-based concurrent license users to which a session-based concurrent license is assigned.

PRIOR ART

Redding	US 6,968,384	Nov. 22, 2005
Conte	US 5,845,065	Dec. 1, 1998
Frison	US 6,049,789	Apr. 11, 2000
Appellants' Admitted Prior Art ("AAPA")		

REJECTIONS

Claims 1, 2, 4-6, 8-12, 14 and 17-19 stand rejected under 35 U.S.C. Section 102(e) as being anticipated by Redding.

Claim 3 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Redding and AAPA.

Claims 7, 13, 15, and 20 stand rejected under 103(a) as being unpatentable over Redding and Conte.

Claim 16 stands rejected under 103(a) as being unpatentable over Redding, Conte, and Frison.

ISSUE

The Examiner makes the following findings.

The "portal" feature is realized by virtue of Redding et al's embodiments involving network authorizations, wherein the user requests authorization for a program using the networked license server and upon granting the authorization to the user, the networked license server functions as the portal or gateway to the requested software on the network wherein the user's computer must remain connected to the network to continue running the protected software (col. 9 lines 45-54).

(Ans. 9-10.) "Redding et al teach the allocation of network authorization licenses which are session based (col. 9 lines 45-65)" (*Id.* 14.)

"Redding et al's teach that after a user requests a commuter authorization license a local check is made to see if the user 'has already received a commuter authorization'; if so the process terminates, if not, the process continues for fulfilling the user's request (col. 10 lines 30-62)." (*Id.* 11.)

The Appellants argue that "the Final Office Action appears to mix and match elements from Redding's two distinct authorization modes"

(Amended App. Br. 8.) Therefore, the issue before us is whether the Appellants have shown error in the Examiner's finding that Redding discloses the claimed portal, session-based licenses, and confirming that an identified source associated with a request needs a concurrent license arranged as in claims 1 and 17.

LAW

"[A]n invention is anticipated if the same device, including all the claim limitations, is shown in a single prior art reference. Every element of the claimed invention must be literally present, arranged as in the claim."

Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed.Cir. 1989) (citing *Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 894 (Fed. Cir. 1984); *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771-72 (Fed. Cir. 1983)).

FINDINGS OF FACT ("FFs")

1. Redding discloses a first licensing scheme "referred to hereinafter as 'network' authorizations." (Col. 9, ll. 53-54.) In this scheme a "client computer 12 must remain connected to the network to continue to run the protected software program." (*Id.* ll. 48-50.)

2. The same reference also discloses a second licensing scheme referred to as "[c]ommuter licensing . . . according to embodiments of the [reference's] invention." (*Id.* ll. 55-56.) "Commuter licensing departs from the concept of requesting and granting a network authorization between license server 14 and client computer 12, and instead is concerned with requesting and granting a 'commuter' authorization between license server 14 and client computer 12." (*Id.* ll. 56-61.)

3. The following disclosure of Redding contrasts the two licensing schemes.

Once a commuter authorization is granted, the client computer 12 can be disconnected from the network, and can independently instantiate the protected application one or more times using the commuter authorization. This is in contrast to network authorizations, where a client computer 12 must

request and receive a network authorization for each instantiation of the protected application.
(Col. 10, ll. 10-16.)

ANALYSIS

We agree with the Appellants that "the Redding patent discloses two different licensing modes" (Amended Appeal Br. 6, Reply Br. 5.) The first mode is the network authorization scheme. (FF 1.) The second mode is the commuter authorization scheme. (FF 2.) The two schemes are disclosed as distinct. (FF 3.)

As aforementioned, the Examiner relies on the network authorization scheme to teach the claimed portal and session-based licenses. As also aforementioned, she relies on the commuter authorization scheme, however, to teach the claimed confirming that an identified source associated with a request needs a concurrent license. Such a "mix[ing] and match[ing] [of] elements from Redding's two distinct authorization modes" (Amended App. Br. 8) is inappropriate for a rejection based on anticipation. Therefore, the Examiner fails to show every element of the claimed invention arranged as in the claims. Nor does she allege, let alone show, that the addition of AAPA, Conte, or Frison cures the aforementioned deficiency of Redding.

CONCLUSION

Based on the aforementioned facts and analysis, we conclude that the Appellants have shown error in the Examiner's finding that Redding discloses the claimed portal, session-based licenses, and confirming that an

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identified source associated with a request needs a concurrent license
arranged as in claims 1 and 17.

DECISION

We reverse the rejections of claims 1-20.

REVERSED

PEB

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